

**Nov 27, 2019**

SEAN F. MCAVOY, CLERK

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON**

KATRINA P.,<sup>1</sup>

Plaintiff,

vs.

ANDREW M. SAUL,  
COMMISSIONER OF SOCIAL  
SECURITY,<sup>2</sup>

Defendant.

No. 1:19-cv-03089-MKD

ORDER DENYING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT AND GRANTING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT

ECF Nos. 13, 14

Before the Court are the parties' cross-motions for summary judgment. ECF Nos. 13, 14. The parties consented to proceed before a magistrate judge. ECF No.

<sup>1</sup> To protect the privacy of plaintiffs in social security cases, the undersigned identifies them by only their first names and the initial of their last names.

<sup>2</sup> Andrew M. Saul is now the Commissioner of the Social Security Administration. Accordingly, the Court substitutes Andrew M. Saul as the Defendant and directs the Clerk to update the docket sheet. *See* Fed. R. Civ. P. 25(d).

1 7. The Court, having reviewed the administrative record and the parties' briefing,  
2 is fully informed. For the reasons discussed below, the Court denies Plaintiff's  
3 motion, ECF No. 13, and grants Defendant's motion, ECF No. 14.

#### 4 **JURISDICTION**

5 The Court has jurisdiction over this case pursuant to 42 U.S.C. § 1383(c)(3).

#### 6 **STANDARD OF REVIEW**

7 A district court's review of a final decision of the Commissioner of Social  
8 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is  
9 limited; the Commissioner's decision will be disturbed "only if it is not supported  
10 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,  
11 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a  
12 reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159  
13 (quotation and citation omitted). Stated differently, substantial evidence equates to  
14 "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and  
15 citation omitted). In determining whether the standard has been satisfied, a  
16 reviewing court must consider the entire record as a whole rather than searching  
17 for supporting evidence in isolation. *Id.*

18 In reviewing a denial of benefits, a district court may not substitute its  
19 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152,  
20 1156 (9th Cir. 2001). If the evidence in the record "is susceptible to more than one

1 rational interpretation, [the court] must uphold the ALJ's findings if they are  
2 supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674  
3 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court "may not reverse an  
4 ALJ's decision on account of an error that is harmless." *Id.* An error is harmless  
5 "where it is inconsequential to the [ALJ's] ultimate nondisability determination."  
6 *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ's  
7 decision generally bears the burden of establishing that it was harmed. *Shinseki v.*  
8 *Sanders*, 556 U.S. 396, 409-10 (2009).

#### 9 **FIVE-STEP EVALUATION PROCESS**

10 A claimant must satisfy two conditions to be considered "disabled" within  
11 the meaning of the Social Security Act. First, the claimant must be "unable to  
12 engage in any substantial gainful activity by reason of any medically determinable  
13 physical or mental impairment which can be expected to result in death or which  
14 has lasted or can be expected to last for a continuous period of not less than twelve  
15 months." 42 U.S.C. § 1382c(a)(3)(A). Second, the claimant's impairment must be  
16 "of such severity that he is not only unable to do his previous work[, ] but cannot,  
17 considering his age, education, and work experience, engage in any other kind of  
18 substantial gainful work which exists in the national economy." 42 U.S.C. §  
19 1382c(a)(3)(B).

1 The Commissioner has established a five-step sequential analysis to  
2 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §  
3 416.920(a)(4)(i)-(v). At step one, the Commissioner considers the claimant's work  
4 activity. 20 C.F.R. § 416.920(a)(4)(i). If the claimant is engaged in "substantial  
5 gainful activity," the Commissioner must find that the claimant is not disabled. 20  
6 C.F.R. § 416.920(b).

7 If the claimant is not engaged in substantial gainful activity, the analysis  
8 proceeds to step two. At this step, the Commissioner considers the severity of the  
9 claimant's impairment. 20 C.F.R. § 416.920(a)(4)(ii). If the claimant suffers from  
10 "any impairment or combination of impairments which significantly limits [his or  
11 her] physical or mental ability to do basic work activities," the analysis proceeds to  
12 step three. 20 C.F.R. § 416.920(c). If the claimant's impairment does not satisfy  
13 this severity threshold, however, the Commissioner must find that the claimant is  
14 not disabled. 20 C.F.R. § 416.920(c).

15 At step three, the Commissioner compares the claimant's impairment to  
16 severe impairments recognized by the Commissioner to be so severe as to preclude  
17 a person from engaging in substantial gainful activity. 20 C.F.R. §  
18 416.920(a)(4)(iii). If the impairment is as severe or more severe than one of the  
19 enumerated impairments, the Commissioner must find the claimant disabled and  
20 award benefits. 20 C.F.R. § 416.920(d).

1 If the severity of the claimant's impairment does not meet or exceed the  
2 severity of the enumerated impairments, the Commissioner must pause to assess  
3 the claimant's "residual functional capacity." Residual functional capacity (RFC),  
4 defined generally as the claimant's ability to perform physical and mental work  
5 activities on a sustained basis despite his or her limitations, 20 C.F.R. §  
6 416.945(a)(1), is relevant to both the fourth and fifth steps of the analysis.

7 At step four, the Commissioner considers whether, in view of the claimant's  
8 RFC, the claimant is capable of performing work that he or she has performed in  
9 the past (past relevant work). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is  
10 capable of performing past relevant work, the Commissioner must find that the  
11 claimant is not disabled. 20 C.F.R. § 416.920(f). If the claimant is incapable of  
12 performing such work, the analysis proceeds to step five.

13 At step five, the Commissioner considers whether, in view of the claimant's  
14 RFC, the claimant is capable of performing other work in the national economy.  
15 20 C.F.R. § 416.920(a)(4)(v). In making this determination, the Commissioner  
16 must also consider vocational factors such as the claimant's age, education and  
17 past work experience. 20 C.F.R. § 416.920(a)(4)(v). If the claimant is capable of  
18 adjusting to other work, the Commissioner must find that the claimant is not  
19 disabled. 20 C.F.R. § 416.920(g)(1). If the claimant is not capable of adjusting to  
20

1 other work, analysis concludes with a finding that the claimant is disabled and is  
2 therefore entitled to benefits. 20 C.F.R. § 416.920(g)(1).

3 The claimant bears the burden of proof at steps one through four above.  
4 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to  
5 step five, the burden shifts to the Commissioner to establish that (1) the claimant is  
6 capable of performing other work; and (2) such work “exists in significant  
7 numbers in the national economy.” 20 C.F.R. § 416.960(c)(2); *Beltran v. Astrue*,  
8 700 F.3d 386, 389 (9th Cir. 2012).

### 9 **ALJ’S FINDINGS**

10 On August 10, 2015, Plaintiff applied for Title XVI supplemental security  
11 income benefits alleging a disability onset date of August 1, 2015.<sup>3</sup> Tr. 214-22.  
12 The application was denied initially, and on reconsideration. Tr. 139-42; Tr. 151-  
13 53. Plaintiff appeared before an administrative law judge (ALJ) on February 23,  
14 2018. Tr. 54-76. On May 14, 2018, the ALJ denied Plaintiff’s claim. Tr. 12-32.

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17 <sup>3</sup> Plaintiff previously filed for benefits on March 3, 2010; that application was  
18 denied by an ALJ on August 29, 2013. Tr. 77-99. The Appeals Council denied  
19 review of the prior application on March 30, 2015. Tr. 100-05.  
20

1 At step one of the sequential evaluation process, the ALJ found Plaintiff has  
2 not engaged in substantial gainful activity since August 10, 2015. Tr. 17. At step  
3 two, the ALJ found that Plaintiff has the following severe impairments: mild  
4 lumbar degenerative disc disease, anxiety, PTSD, depression, and a personality  
5 disorder. *Id.*

6 At step three, the ALJ found Plaintiff does not have an impairment or  
7 combination of impairments that meets or medically equals the severity of a listed  
8 impairment. Tr. 18. The ALJ then concluded that Plaintiff has the RFC to perform  
9 medium work with the following limitations:

10 Occasional stooping and climbing; limited to performing simple,  
11 repetitive, and routine tasks requiring no more than occasional contact  
12 with the public; and can work in close proximity to other coworkers,  
but not on a collaborative basis.

13 Tr. 20.

14 At step four, the ALJ found Plaintiff has no past relevant work. Tr. 27. At  
15 step five, the ALJ found that, considering Plaintiff's age, education, work  
16 experience, RFC, and testimony from the vocational expert, there were jobs that  
17 existed in significant numbers in the national economy that Plaintiff could perform,  
18 such as janitor, hand packager, and laundry worker. Tr. 28. Therefore, the ALJ  
19 concluded Plaintiff was not under a disability, as defined in the Social Security  
20 Act, from August 10, 2015, the date of the application, through the date of the  
decision. *Id.*

1 On March 1, 2019, the Appeals Council denied review of the ALJ's  
2 decision, Tr. 1-5, making the ALJ's decision the Commissioner's final decision for  
3 purposes of judicial review. *See* 42 U.S.C. § 1383(c)(3).

#### 4 ISSUES

5 Plaintiff seeks judicial review of the Commissioner's final decision denying  
6 her supplemental security income benefits under Title XVI of the Social Security  
7 Act. Plaintiff raises the following issues for review:

- 8 1. Whether the ALJ properly applied res judicata to the claim;
- 9 2. Whether the ALJ properly evaluated Plaintiff's symptom claims;
- 10 3. Whether the ALJ properly evaluated the medical opinion evidence; and
- 11 4. Whether the ALJ conducted a proper step-three analysis.

12 ECF No. 13 at 2.

#### 13 DISCUSSION

##### 14 A. Res Judicata

15 Plaintiff contends the ALJ improperly applied res judicata to the claim. ECF  
16 No. 13 at 5-6. "The principles of res judicata apply to administrative decisions,  
17 although the doctrine is applied less rigidly to administrative proceedings than to  
18 judicial proceedings." *Chavez v. Bowen*, 844 F.2d 691, 693 (9th Cir. 1998) (citing  
19 *Lyle v. Sec'y of Health and Human Servs.*, 700 F.2d 566, 568 n.2 (9th Cir. 1983)).  
20 Under the doctrine of res judicata, a prior, final determination of nondisability bars



1 relitigation of that claim through the date of the prior decision. *Lester v. Chater*,  
2 81 F.3d 821, 827 (9th Cir. 1995). Furthermore, in the Ninth Circuit, a prior, final  
3 determination of nondisability “create[s] a presumption that [the claimant]  
4 continued to be able to work after that date.” *Id.* (citation and internal quotation  
5 marks omitted).<sup>4</sup> “However, the authority to apply res judicata to the period  
6 subsequent to a prior determination is much more limited.” *Id.* (emphasis in  
7 original).

8 “The claimant, in order to overcome the presumption of continuing  
9 nondisability arising from the first administrative law judge’s findings of  
10 nondisability, must prove ‘changed circumstances’ indicating a greater disability.”  
11 *Chavez*, 844 F.2d at 693 (citation omitted). Examples of changed circumstances  
12 include “[a]n increase in the severity of the claimant’s impairment,” “a change in  
13 the claimant’s age category,” and a new issue raised by the claimant, “such as the  
14 existence of an impairment not considered in the previous application.” *Lester*, 81

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16 <sup>4</sup> Acquiescence Ruling (AR) 97-4(9) explains how *Chavez* differs from the Social  
17 Security Administration’s (SSA) interpretation of Social Security policy requiring  
18 de novo review of claims for unadjudicated periods. The SSA applies the *Chavez*  
19 presumption only as to claimants residing in the Ninth Circuit. AR 97-4(9),  
20 available at 1997 WL 742758 at \*3.

1 F.3d at 827-28 (citations omitted); *see* AR 97-4(9). In addition, the first ALJ's  
2 findings concerning the claimant's RFC, education and work experience are  
3 entitled to "some res judicata consideration" in later proceedings. AR 97-4(9).

4 Here, the ALJ found there were changed circumstances and therefore did not  
5 adopt all findings from the prior decision. Tr. 15. The ALJ reasoned Plaintiff's  
6 alleged onset date and severe impairments have changed, Plaintiff submitted new  
7 and material evidence, and the mental health listings changed after the prior  
8 decision. *Id.* The ALJ found these changes all supported a finding of changed  
9 circumstances. *Id.*

10 Plaintiff argues the ALJ erred in his application of res judicata to her claim  
11 because the ALJ's RFC has fewer physical limitations than the RFC from the 2013  
12 ALJ decision. ECF No. 13 at 5-6. In 2013, the prior ALJ found Plaintiff was  
13 capable of no more than light work, with the following additional limitations:

14 She can stand and/or walk for six of eight hours in a workday. She  
15 can sit for six of eight hours in a workday. She should not be required  
16 to climb other than stairs and ramps. She should avoid concentrated  
17 exposure to work place hazards, such as machinery with moving parts  
18 and work at heights. She should also avoid concentrated exposure to  
19 environmental irritants, such as fumes, noxious gases, and dust. She  
20 can persist and sustain simple, routine, repetitive work with only  
occasional or brief public contact.

Tr. 86.

In the instant case, the ALJ found Plaintiff capable of performing medium  
work with occasional stooping and climbing, without any other physical

1 limitations. Tr. 20. The ALJ found Plaintiff capable of simple, routine tasks and  
2 occasional contact with the public, as well as no collaborative work with  
3 coworkers. *Id.* Plaintiff argues the ALJ committed harmful error by finding  
4 Plaintiff capable of performing medium work, without explaining or citing to  
5 evidence in support of a finding that Plaintiff has improved since 2013. ECF No.  
6 13 at 5-6.

7 While a previous ALJ's findings concerning a claimant's RFC are  
8 entitled to some res judicata consideration, the findings can be reconsidered  
9 by a subsequent judge upon showing of new information that was not  
10 presented to the first judge. *Stubbs-Danielson v. Astrue*, 539 F.3d 1169,  
11 1173 (9th Cir. 2008) (citing *Chavez*, 844 F.2d at 694). In this case, the  
12 record contains evidence from treating providers as well as psychological  
13 and physical consultative examinations, which are dated after the 2013  
14 decision.

15 The ALJ reasoned there are limited records during the relevant  
16 adjudicative period, and the records demonstrate Plaintiff had only  
17 intermittent complaints of back pain, and on exam, she generally had no  
18 pain, normal strength and normal range of motion. Tr. 24 (citing Tr. 345,  
19 348-56, 575). In 2015, imaging of her back showed no evidence of acute  
20 cervical spine pathology, and no imaging of Plaintiff's lower back was

1 taken, which the ALJ interpreted as the provider finding there was no need  
2 for such imaging. Tr. 24 (citing Tr. 341, 574). In 2016, imaging showed  
3 mild to moderate L5-S1 disc space narrowing and mild anterior spurring, Tr.  
4 420-21, and a 2016 consultative exam demonstrated normal range of motion,  
5 strength, motor skills, gait and no pain or tenderness, Tr. 461-62. The  
6 consultative examiner opined Plaintiff had no limitations in her ability to  
7 stand, walk, sit, or lift/carry. Tr. 462-63. These records presented new and  
8 material information not presented to the first ALJ; as such, the ALJ was not  
9 required to give the 2013 RFC preclusive effect, in light of the new and  
10 material information. *See Stubbs-Danielson*, 539 F.3d at 1173. The ALJ  
11 reasonably relied on the new evidence in assessing Plaintiff's RFC and his  
12 determination will not be disturbed. *See Rollins v. Massanari*, 261 F.3d 853,  
13 857 (9th Cir. 2001). Plaintiff is not entitled to remand on these grounds.

#### 14 **B. Plaintiff's Symptom Claims**

15 Plaintiff faults the ALJ for failing to rely on clear and convincing reasons in  
16 discrediting her symptom claims. ECF No. 13 at 6-15. An ALJ engages in a two-  
17 step analysis to determine whether to discount a claimant's testimony regarding  
18 subjective symptoms. Social Security Ruling (SSR) 16-3p, 2016 WL 1119029, at  
19 \*2. "First, the ALJ must determine whether there is objective medical evidence of  
20 an underlying impairment which could reasonably be expected to produce the pain

1 or other symptoms alleged.” *Molina*, 674 F.3d at 1112 (quotation marks omitted).

2 “The claimant is not required to show that [the claimant’s] impairment could  
3 reasonably be expected to cause the severity of the symptom [the claimant] has  
4 alleged; [the claimant] need only show that it could reasonably have caused some  
5 degree of the symptom.” *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009).

6 Second, “[i]f the claimant meets the first test and there is no evidence of  
7 malingering, the ALJ can only reject the claimant’s testimony about the severity of  
8 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the  
9 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations  
10 omitted). General findings are insufficient; rather, the ALJ must identify what  
11 symptom claims are being discounted and what evidence undermines these claims.  
12 *Id.* (quoting *Lester*, 81 F.3d at 834; *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th  
13 Cir. 2002) (requiring the ALJ to sufficiently explain why it discounted claimant’s  
14 symptom claims)). “The clear and convincing [evidence] standard is the most  
15 demanding required in Social Security cases.” *Garrison v. Colvin*, 759 F.3d 995,  
16 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r of Soc. Sec. Admin.*, 278 F.3d 920,  
17 924 (9th Cir. 2002)).

18 Factors to be considered in evaluating the intensity, persistence, and limiting  
19 effects of a claimant’s symptoms include: 1) daily activities; 2) the location,  
20 duration, frequency, and intensity of pain or other symptoms; 3) factors that

1 precipitate and aggravate the symptoms; 4) the type, dosage, effectiveness, and  
2 side effects of any medication an individual takes or has taken to alleviate pain or  
3 other symptoms; 5) treatment, other than medication, an individual receives or has  
4 received for relief of pain or other symptoms; 6) any measures other than treatment  
5 an individual uses or has used to relieve pain or other symptoms; and 7) any other  
6 factors concerning an individual's functional limitations and restrictions due to  
7 pain or other symptoms. SSR 16-3p, 2016 WL 1119029, at \*7; 20 C.F.R. §  
8 416.929 (c). The ALJ is instructed to "consider all of the evidence in an  
9 individual's record," "to determine how symptoms limit ability to perform work-  
10 related activities." SSR 16-3p, 2016 WL 1119029, at \*2.

11 The ALJ found that Plaintiff's medically determinable impairments could  
12 reasonably be expected to cause some of the alleged symptoms, but that Plaintiff's  
13 statements concerning the intensity, persistence, and limiting effects of her  
14 symptoms were not entirely consistent with the evidence. Tr. 21.

15 First, the ALJ found the objective evidence did not support Plaintiff's  
16 allegations. Tr. 21-24. An ALJ may not discredit a claimant's symptom testimony  
17 and deny benefits solely because the degree of the symptoms alleged is not  
18 supported by objective medical evidence. *Rollins*, 261 F.3d at 857; *Bunnell v.*  
19 *Sullivan*, 947 F.2d 341, 346-47 (9th Cir. 1991); *Fair v. Bowen*, 885 F.2d 597, 601  
20 (9th Cir. 1989); *Burch v. Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005). However,

1 the objective medical evidence is a relevant factor, along with the medical source's  
2 information about the claimant's pain or other symptoms, in determining the  
3 severity of a claimant's symptoms and their disabling effects. *Rollins*, 261 F.3d at  
4 857; 20 C.F.R. § 416.929(c)(2). Mental status examinations are objective  
5 measures of an individual's mental health. *Buck v. Berryhill*, 869 F.3d 1040, 1049  
6 (9th Cir. 2017).

7 Here, the ALJ found the objective evidence does not support Plaintiff's  
8 allegations of disabling back pain. Tr. 21, 24. The ALJ noted that the records do  
9 not demonstrate ongoing issues with back pain, weakness, reduced range of motion  
10 or tenderness. Tr. 24 (citing Tr. 345, 348-56, 462, 514, 562, 564, 575, 588, 590).

11 A 2016 exam demonstrated a mild to moderate limitation in some areas of  
12 Plaintiff's range of motion in her back. Tr. 24 (citing Tr. 531-32). Imaging of the  
13 cervical spine showed no acute cervical spine pathology, Tr. 574, and lumbar spine  
14 imaging showed mild to moderate L5-S1 disc and endplate degeneration, Tr. 533.

15 The ALJ also found the objective evidence does not support Plaintiff's  
16 allegations of disabling mental health symptoms. Tr. 22. The ALJ reasoned  
17 Plaintiff's generally stable findings on mental status exams were inconsistent with  
18 her allegations. Tr. 22-23 (citing Tr. 345, 348-61, 456-59, 575). When seen for  
19 treatment for physical symptoms, Plaintiff was generally observed as not  
20 experiencing any psychological symptoms. Tr. 23 (citing Tr. 335-38, 514, 516,

1 534-35, 538, 596, 603, 623, 631). Plaintiff also was observed as not having any  
2 learning barriers or functional limitations. Tr. 590.

3 Plaintiff contends the ALJ's summary of the evidence is inaccurate and does  
4 not support a finding that Plaintiff's allegations are not supported by the objective  
5 evidence. ECF No. 13 at 11-12. Plaintiff argues the summary includes only  
6 cursory findings regarding alertness and distress and that the citations are often  
7 inaccurate, as Plaintiff was noted as in distress in multiple cited records. *Id.*  
8 Plaintiff does not challenge the ALJ's summary of the evidence regarding  
9 Plaintiff's back impairment; a review of the evidence demonstrates the ALJ  
10 accurately summarized Plaintiff's generally normal back examinations. Tr. 345  
11 (normal range of motion, no tenderness); Tr. 348 (normal back examination); Tr.  
12 462 (normal examination); Tr. 514 (normal examination); Tr. 531-32 (mild to  
13 moderate limitation in some areas of range of motion in the back).

14 While Plaintiff is correct that some of the records indicate Plaintiff was in  
15 mild or moderate distress, none of the records demonstrate any evidence of  
16 psychological symptoms. When Plaintiff was noted as anxious or in any pain or  
17 distress, it was in the context of an acute physical issue each time, rather than a  
18 psychological issue. Tr. 335-38 (injured ankle); Tr. 351 (burn); Tr. 353 (acute  
19 otitis media and temporomandibular joint disorder); Tr. 535 (injured wrist); Tr. 575



1 (fall). During the visits, Plaintiff was always alert, oriented, and never had any  
2 notes regarding abnormal mood or affect. *See, e.g.*, Tr. 358, 514, 534-35, 575.

3 During a psychological consultative examination, though Plaintiff was  
4 anxious and depressed, with variable insight/judgement and a narrow range of  
5 affect, Tr. 457-58, she had normal behavior, psychomotor functioning, eye  
6 contact, speech, interpersonal skills, persistence, orientation and abstract thinking,  
7 *Id.* On exam, Plaintiff's short-term memory and concentration were normal,  
8 though she exhibited some difficulty staying on track and sharing information in a  
9 logical manner during the conversation. Tr. 458.

10 The cited evidence demonstrates Plaintiff has generally not exhibited nor  
11 reported psychological symptoms at appointments and Plaintiff does not point to  
12 any evidence of ongoing psychological symptoms in the records. Plaintiff was  
13 only occasionally observed as anxious, Tr. 524, 549, 564, and generally the notes  
14 indicate no presence of observable psychological symptoms, Tr. 337, 355, 361,  
15 366, 514, 590. While Plaintiff alleges she has panic attacks and agoraphobia, Tr.  
16 59, she has only reported panic attacks and agoraphobia once to a provider, when  
17 she was seeking completion of paperwork for benefits, Tr. 523-25. The ALJ  
18 reasonably concluded that the objective evidence is inconsistent with Plaintiff's  
19 symptom complaints.

1 Second, the ALJ found Plaintiff's activities of daily living were inconsistent  
2 with her allegations. Tr. 21. The ALJ may consider a claimant's activities that  
3 undermine reported symptoms. *Rollins*, 261 F.3d at 857. If a claimant can spend a  
4 substantial part of the day engaged in pursuits involving the performance of  
5 exertional or non-exertional functions, the ALJ may find these activities  
6 inconsistent with the reported disabling symptoms. *Fair*, 885 F.2d at 603; *Molina*,  
7 674 F.3d at 1113. "While a claimant need not vegetate in a dark room in order to  
8 be eligible for benefits, the ALJ may discount a claimant's symptom claims when  
9 the claimant reports participation in everyday activities indicating capacities that  
10 are transferable to a work setting" or when activities "contradict claims of a totally  
11 debilitating impairment." *Molina*, 674 F.3d at 1112-13.

12 The ability to care for others without help has been considered an activity  
13 that may undermine claims of totally disabling pain. *Rollins*, 261 F.3d at 857.  
14 However, if the care activities are to serve as a basis for the ALJ to discredit the  
15 Plaintiff's symptom claims, the record must identify the nature, scope, and  
16 duration of the care involved and this care must be "hands on" rather than a "one-  
17 off" care activity. *Trevizo v. Berryhill*, 871 F.3d 664, 675-76 (9th Cir. 2017).

18 Here, the ALJ found Plaintiff's activities were inconsistent with her reported  
19 disabling back pain and mental health symptoms. Tr. 21. While Plaintiff alleges  
20 limitations in exertional and postural activities, and mental functioning, *Id.* (citing

Tr. 261), she reported the ability to engage in most activities independently, Tr. 21 (citing Tr. 257-60). The ALJ considered Plaintiff's ability to independently care for herself, pets, and her child, including providing transportation, handling household chores, grocery shopping and managing her money. Tr. 21-22 (citing Tr. 257-60, 274-77, 302-05, 462-63). The ALJ reasoned Plaintiff's socializing with her son and mother, trips to the store and to provide her son's transportation, and her use of Facebook, were inconsistent with her alleged social isolation. Tr. 24. The ALJ also considered Plaintiff's physical activities to be inconsistent with her allegations of back pain, including her physical care for her son and pets, ability to mow the lawn, clean her house and carry firewood. Tr. 24-25 (citing Tr. 256-59, 274-77, 302-05, 461-62, 470, 514, 574-75).

Plaintiff argues the ALJ erred because the findings were not specific enough. ECF No. 13 at 7. Plaintiff contends the ALJ did not properly explain how Plaintiff's activities within her home and socializing with her family was inconsistent with her allegations of disabling mental impairments, specifically agoraphobia, as her allegations primarily relate to limitations in activities outside of the home. ECF No. 13 at 7-9. Plaintiff also contends the ALJ did not explain how the physical activities are inconsistent with any allegations, and argues the activities are not comparable to any work activity. ECF No. 13 at 9-10.

1 The ALJ specifically noted that Plaintiff alleged difficulty with all of the  
2 following physical activities: lifting, squatting, bending, standing, reaching,  
3 walking, sitting, kneeling and stair climbing. Tr. 21 (citing Tr. 261). These  
4 allegations, and the allegation of disability due to a back impairment, are  
5 inconsistent with Plaintiff's reported ability to handle personal care and care for  
6 pets and her son, mow the lawn, carry firewood, go outside daily, walk, shop, drive  
7 and go places regularly. Tr. 21 (citing Tr. 257-60, 264). Plaintiff's care for her  
8 son includes changing, bathing, dressing, playing with him and providing  
9 transportation for him. Tr. 21 (citing Tr. 257-60, 264). The activities summarized  
10 by the ALJ include Plaintiff taking her son to school, visiting her mother, and  
11 grocery shopping, all of which require leaving her home, and are inconsistent with  
12 the allegation of agoraphobia. Tr. 24. The ALJ reasonably concluded that  
13 Plaintiff's activities of daily living were inconsistent with her allegations of  
14 disabling back pain and mental health symptoms.

15 Third, the ALJ found Plaintiff's minimal treatment inconsistent with her  
16 allegations. Tr. 22. An unexplained, or inadequately explained, failure to seek  
17 treatment or follow a prescribed course of treatment may be considered when  
18 evaluating the claimant's subjective symptoms. *Orn v. Astrue*, 495 F.3d 625, 638  
19 (9th Cir. 2007). Evidence of a claimant's self-limitation and lack of motivation to  
20 seek treatment are appropriate considerations in determining the credibility of a

1 claimant's subjective symptom reports. *Osenbrock v. Apfel*, 240 F.3d 1157, 1165-  
2 66 (9th Cir. 2001); *Bell-Shier v. Astrue*, 312 F. App'x 45, \*3 (9th Cir. 2009)  
3 (unpublished opinion) (considering why plaintiff was not seeking treatment).  
4 When there is no evidence suggesting that the failure to seek or participate in  
5 treatment is attributable to a mental impairment rather than a personal preference,  
6 it is reasonable for the ALJ to conclude that the level or frequency of treatment is  
7 inconsistent with the alleged severity of complaints. *Molina*, 674 F.3d at 1113-14.  
8 But when the evidence suggests lack of mental health treatment is partly due to a  
9 claimant's mental health condition, it may be inappropriate to consider a  
10 claimant's lack of mental health treatment when evaluating the claimant's failure  
11 to participate in treatment. *Nguyen v. Chater*, 100 F.3d 1462, 1465 (9th Cir. 1996).

12 Here, the ALJ observed that Plaintiff has had limited treatment since her  
13 alleged onset date. Tr. 22. Plaintiff testified at the hearing that she was not  
14 seeking treatment for her anxiety nor pain. Tr. 21, 63-64. The ALJ reasoned that  
15 such a limited record made it difficult for the Plaintiff to show any significant and  
16 consistent limitations. Tr. 21. The ALJ found the record did not support Plaintiff's  
17 alleged severity of her symptoms. *Id.*

18 Plaintiff argues the ALJ erred by not considering the barrier to accessing  
19 care caused by Plaintiff's agoraphobia. ECF No. 13 at 13. Plaintiff argues the  
20 ALJ found anxiety to be a severe impairment, which "encompasses the symptoms

1 of agoraphobia,” and thus the ALJ should have considered the effect Plaintiff’s  
2 agoraphobia had on her ability to access treatment. ECF No. 16 at 3. However,  
3 Plaintiff only reported agoraphobia symptoms at a single visit in May 2016. Tr.  
4 503-04, 524-25. She has not reported difficulty accessing treatment for any reason  
5 during the relevant adjudicative period. At the hearing, Plaintiff testified she had  
6 not found medications or injections effective for her anxiety or pain but provided  
7 no explanation as to why she was not seeking any other form of treatment. Tr. 63-  
8 64. Further, as discussed above, Plaintiff has reported an ability to leave her home  
9 to visit her mother, shop, provide transportation for her son and attend  
10 appointments, and she reported trying to leave her home daily. Tr. 257-60, 264.  
11 The evidence does not support a finding that Plaintiff’s mental impairments  
12 impeded her ability to access care.

13 On this record, the ALJ reasonably concluded that the objective evidence,  
14 Plaintiff’s activities of daily living and Plaintiff’s lack of treatment were  
15 inconsistent with Plaintiff’s allegations. These findings are supported by  
16 substantial evidence and were clear and convincing reasons to discount Plaintiff’s  
17 symptoms complaints. Plaintiff is not entitled to remand on these grounds.

### 18 **C. Medical Opinion Evidence**

19 Plaintiff contends the ALJ erred in his analysis of the opinions of Dr. Miller  
20 and Ms. Elliott. ECF No. 13 at 15-19.

1       There are three types of physicians: “(1) those who treat the claimant  
2 (treating physicians); (2) those who examine but do not treat the claimant  
3 (examining physicians); and (3) those who neither examine nor treat the claimant  
4 [but who review the claimant’s file] (nonexamining [or reviewing] physicians).”  
5 *Holohan v. Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (citations omitted).  
6 Generally, a treating physician’s opinion carries more weight than an examining  
7 physician’s, and an examining physician’s opinion carries more weight than a  
8 reviewing physician’s. *Id.* at 1202. “In addition, the regulations give more weight  
9 to opinions that are explained than to those that are not, and to the opinions of  
10 specialists concerning matters relating to their specialty over that of  
11 nonspecialists.” *Id.* (citations omitted).

12       If a treating or examining physician’s opinion is uncontradicted, the ALJ  
13 may reject it only by offering “clear and convincing reasons that are supported by  
14 substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).  
15 “However, the ALJ need not accept the opinion of any physician, including a  
16 treating physician, if that opinion is brief, conclusory and inadequately supported  
17 by clinical findings.” *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228  
18 (9th Cir. 2009) (internal quotation marks and brackets omitted). “If a treating or  
19 examining doctor’s opinion is contradicted by another doctor’s opinion, an ALJ  
20 may only reject it by providing specific and legitimate reasons that are supported

1 by substantial evidence.” *Bayliss*, 427 F.3d at 1216 (citing *Lester*, 81 F.3d at 830-  
2 31). The opinion of a nonexamining physician may serve as substantial evidence if  
3 it is supported by other independent evidence in the record. *Andrews v. Shalala*,  
4 53 F.3d 1035, 1041 (9th Cir. 1995).

5 “Only physicians and certain other qualified specialists are considered  
6 ‘[a]cceptable medical sources.’” *Ghanim*, 763 F.3d at 1161 (alteration in original);  
7 see 20 C.F.R. § 416.902<sup>5</sup> (acceptable medical sources include licensed physicians,  
8 licensed or certified psychologists, licensed optometrists, licensed podiatrists,  
9 qualified speech-language pathologists, licensed audiologists, licensed advanced  
10 practice registered nurses, and licensed physician assistants). However, an ALJ is  
11 required to consider evidence from non-acceptable medical sources, such as  
12 therapists. 20 C.F.R. § 416.927(f).<sup>6</sup> An ALJ may reject the opinion of a non-  
13 acceptable medical source by giving reasons germane to the opinion. *Ghanim*, 763  
14 F.3d at 1161.

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15  
16  
17 <sup>5</sup> Prior to March 27, 2017, the definition of an acceptable medical source was  
18 located at 20 C.F.R. § 416.913.

19 <sup>6</sup> Prior to March 27, 2017, the requirement that an ALJ consider evidence from  
20 non-acceptable medical sources was located at 20 C.F.R. § 416.913(d).



1           *1. Dr. Miller*

2           Dr. Miller performed a psychological consultative examination of Plaintiff  
3 in 2016 and provided an opinion on Plaintiff's functioning. Tr. 456-59. Dr. Miller  
4 opined Plaintiff is able to reason and solve simple problems, can understand and  
5 remember simple instructions, and she can adapt to change. Tr. 459. Dr. Miller  
6 further opined Plaintiff gets overwhelmed with complicated problems, gets  
7 confused/overwhelmed with complicated instructions, is easily sidetracked and  
8 forgets what she needs to do, is often irritable and worried and does not socialize  
9 much outside of her family. *Id.* The ALJ gave Dr. Miller's opinion partial weight.  
10 Tr. 25. As Dr. Miller's opinion is contradicted, the ALJ was required to give  
11 specific and legitimate reasons, supported by substantial evidence, to reject the  
12 opinion. *See Bayliss*, 427 F.3d at 1216.

13           First, the ALJ found Dr. Miller's opinion regarding Plaintiff's social  
14 limitations is inconsistent with her own examination notes. Tr. 25. A medical  
15 opinion may be rejected if it is unsupported by medical findings. *Bray*, 554 F.3d at  
16 1228; *Batson*, 359 F.3d at 1195; *Thomas*, 278 F.3d at 957; *Tonapetyan v. Halter*,  
17 242 F.3d 1144, 1149 (9th Cir. 2001); *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th  
18 Cir. 1992). Furthermore, a physician's opinion may be rejected if it is unsupported  
19 by the physician's own treatment notes. *Connett v. Barnhart*, 340 F.3d 871, 875  
20 (9th Cir. 2003).

1 On exam, Dr. Miller found Plaintiff was cooperative, had normal eye  
2 contact, behavior, persistence and motivation, and adequate interpersonal skills.  
3 Tr. 25, 457. Plaintiff was also anxious and depressed, as well as tearful throughout  
4 the assessment. Tr. 457. Plaintiff sobbed during the exam when discussing her  
5 children who no longer live with her, reported her mood as terrible, and she had a  
6 narrow range of affect. Tr. 457-58. She had some difficulty following the  
7 conversation, required redirection at times, tended to focus the conversation back  
8 on her emotional problems, and had difficulty organizing her thoughts into a  
9 logical story. Tr. 458. Plaintiff was easily re-directed though and was able to  
10 complete the examination with normal results on the memory and concentration  
11 testing. *Id.*

12 While Plaintiff exhibited some abnormalities on exam, Plaintiff's normal  
13 eye contact, ability to be easily re-directed to the conversation and to complete the  
14 exam with normal scores, and Dr. Miller finding Plaintiff had normal behavior and  
15 adequate interpersonal skills, demonstrates an ability to engage in a social  
16 situation. Tr. 457-58. The ALJ's interpretation of the evidence is reasonable and  
17 thus will not be disturbed. *See Rollins*, 261 F.3d at 857. This was a specific and  
18 legitimate reason to reject Dr. Miller's opinion.

19 Second, the ALJ found Plaintiff's activities of daily living were inconsistent  
20 with Dr. Miller's opinion. Tr. 25. An ALJ may discount a medical source opinion

1 to the extent it conflicts with the claimant's daily activities. *Morgan v. Comm'r of*  
2 *Soc. Sec. Admin.*, 169 F.3d 595, 601-02 (9th Cir. 1999). The ALJ found the  
3 records, which indicate Plaintiff can function independently and is capable of  
4 occasional public contact, inconsistent with Dr. Miller's opinion. Tr. 25 (citing Tr.  
5 257-62, 274-77, 302-05, 457-58).

6 While Dr. Miller stated Plaintiff does not socialize much outside of her  
7 home and is often irritable and worried, Tr. 459, the ALJ's finding that Plaintiff's  
8 activities suggest that she can engage in activities outside of her home and with  
9 individuals who are not family members is reasonable and will not be disturbed.  
10 Plaintiff reported to Dr. Miller that she had no friends. Tr. 456. However, in  
11 December 2014, Plaintiff was living with a friend/boyfriend. Tr. 375. In  
12 December 2016, a friend brought Plaintiff to the hospital multiple times. Tr. 516,  
13 626, 635. Plaintiff reported talking on the phone daily with her mother, and with  
14 others several times per month, as well as using the internet to communicate with  
15 others, going to the grocery store twice per month, doctors' offices as needed, and  
16 seeing others in her home or in the store. Tr. 260. This was a specific and  
17 legitimate reason, supported by substantial evidence, to reject Dr. Miller's opinion.

18 Plaintiff argues the ALJ improperly rejected Dr. Miller's opinion that  
19 Plaintiff has limitations in staying on-task without getting sidetracked or forgetting  
20 what she needs to do. ECF No. 13 at 16-17. Plaintiff argues this was a harmful

1 error because the vocational expert testified an individual who would be off task  
2 more than 20 percent of the time is not competitively employable. ECF No. 13 at  
3 17. Plaintiff's interpretation of this portion of the opinion is inconsistent with Dr.  
4 Miller's full opinion.

5 Dr. Miller opined that Plaintiff is capable of understanding and remembering  
6 simple instructions, reasoning and solving simple problems, and adapting to  
7 change. Tr. 459. While Dr. Miller opined Plaintiff "struggles to maintain her  
8 concentration and attention," Dr. Miller did not quantify the opinion and did not  
9 give any indication that Plaintiff would be unable to perform simple tasks due to  
10 impaired concentration/attention. *Id.* The ALJ interpreted Dr. Miller's opinion as  
11 meaning she believed Plaintiff could sustain simple, routine tasks. Tr. 25. Plaintiff  
12 urges for another interpretation of the opinion, however, "[T]he ALJ is the final  
13 arbiter with respect to resolving ambiguities in the medical evidence." *Tommasetti*  
14 *v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008). Despite Plaintiff's assertions  
15 otherwise, Dr. Miller's statements are not discrete limitations. The possibility of a  
16 limitation is not a limitation, let alone an indicator as to the severity of such  
17 potential limitation. Therefore, the ALJ's determination limiting Dr. Miller's  
18 opinion to the simple, routine tasks limitation, is reasonable.

19 Even if the ALJ rejected Dr. Miller's opinion regarding Plaintiff struggling  
20 with concentration and attention, the error would be harmless. Given the lack of

1 specific limitations regarding concentration, there are no specific limitations the  
2 ALJ failed to include, and the failure to include the limitations could not have  
3 impacted the final disability determination. *Id.* at 1038 (an error is harmless when  
4 “it is clear from the record that the . . . error was inconsequential to the ultimate  
5 nondisability determination”). The ALJ gave specific and legitimate reasons,  
6 supported by substantial evidence, to reject Dr. Miller’s opinion.

7       2. *Ms. Elliott*

8       Ms. Elliott, PA-C, performed a physical evaluation of Plaintiff in 2016 and  
9 provided an opinion on Plaintiff’s functioning. Tr. 502-06. Ms. Elliott opined  
10 Plaintiff’s spinal stenosis with disc protrusion, neuropathy, agoraphobia and  
11 anxiety caused moderate to severe limitations in the following activities: sitting,  
12 standing, walking, lifting, carrying, handling, pushing, pulling, reaching, stooping,  
13 crouching and communicating. Tr. 503. She opined Plaintiff is unable to meet the  
14 demands of sedentary work, and the limitation would last six to twelve months.  
15 Tr. 504. Ms. Elliott noted Plaintiff’s x-rays and other previous back studies were  
16 needed, and recommended she see a spine specialist, psychologist and psychiatrist,  
17 and that she start taking gabapentin. *Id.* The ALJ gave Ms. Elliott’s opinion little  
18 weight. Tr. 25. As Ms. Elliott is a non-acceptable medical source, the ALJ was  
19 required to give germane reasons for rejecting the opinion. *See Ghanim*, 763 F.3d  
20 at 1161.

1 First, the ALJ found the opinion is not supported by the longitudinal record.  
2 Tr. 25. Relevant factors to evaluating any medical opinion include the amount of  
3 relevant evidence that supports the opinion, the quality of the explanation provided  
4 in the opinion, and the consistency of the medical opinion with the record.  
5 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1042 (9th Cir. 2007); *Orn*, 495 F.3d at 631.  
6 Here, the ALJ found the evidence from the relevant adjudicative period was  
7 inconsistent with Ms. Elliott's opinion. Tr. 25. Dr. Leinenbach's examination  
8 resulted in an opinion that Plaintiff had minimal postural limitations and no  
9 exertional limitations. *Id.* (citing Tr. 462-63). Additionally, the imaging showed  
10 only mild lumbar degeneration. Tr. 25 (citing Tr. 420-21, 507).

11 Plaintiff argues the ALJ erred in rejecting Ms. Elliott's opinion based on the  
12 other evidence, specifically Dr. Leinenbach's opinion, as the ALJ did not give full  
13 weight to Dr. Leinenbach's opinion. ECF No. 13 at 19. Plaintiff urges the Court  
14 to re-weigh the evidence. However, it is the ALJ's responsibility to resolve  
15 conflicts in the medical evidence. *Andrews*, 53 F.3d at 1039. Where the ALJ's  
16 interpretation of the record is reasonable as it is here, it should not be second-  
17 guessed. *See Rollins*, 261 F.3d at 857. The ALJ cited to evidence that is  
18 inconsistent with Ms. Elliott's opinion, including an examination, opinion and  
19 imaging. This was a germane reason to reject Ms. Elliott's opinion.  
20

1 Second, the ALJ found the opinion is not supported by Ms. Elliott's own  
2 examination notes. Tr. 25. An opinion may be rejected if it is unsupported by the  
3 provider's treatment notes. *Connett*, 340 F.3d at 875. Here, the ALJ reasoned Ms.  
4 Elliott's exam showed only mild to moderate limitations in some areas of  
5 Plaintiff's range of motion of her back. Tr. 25 (citing Tr. 505-06).

6 Plaintiff argues Ms. Elliott's opinion was consistent with her examination  
7 notes, because her opinion that Plaintiff cannot sustain even sedentary work is  
8 based on a combination of Plaintiff's mental and physical limitations, not just her  
9 physical symptoms. ECF No. 13 at 18. However, Ms. Elliott noted Plaintiff's  
10 chief complaints were chronic low back pain, neuropathy, and anxiety. Tr. 502.  
11 Ms. Elliott opined Plaintiff's spinal stenosis and neuropathy cause marked to  
12 severe limitations in her ability to stand, sit, walk, lift, carry, handle, push, pull,  
13 reach, stoop and crouch. Tr. 503. She opined Plaintiff's agoraphobia and anxiety  
14 impacted only her ability to communicate. *Id.* These notes indicate that Ms.  
15 Elliott based her opinion at least in part on Plaintiff's physical impairments.

16 Ms. Elliott's opinion that Plaintiff's spinal stenosis and neuropathy cause  
17 marked to severe limitations is out of proportion with the exam, in which Plaintiff  
18 had generally normal range of motion, with decreased range in her back, hip and  
19 neck of only five to fifteen degrees in most areas with limitations, while she had a  
20 twenty five degree impairment in her back flexion. Tr. 506. The form asks Ms.

1 Elliott to attach chart notes detailing any examination findings; there are no  
2 findings regarding Plaintiff's strength, gait, sensation, or reflexes. Tr. 503, 505-09.  
3 The attached imaging showed only mild disc and endplate degeneration, Tr. 507,  
4 and while there was a disk protrusion with crowding of the left S1 nerve root, the  
5 MRI findings state the "visualized spinal cord and nerve roots are within normal  
6 limits," Tr. 509. This was a germane reason to reject Ms. Elliott's opinion.

7 Third, the ALJ found the opinion is inconsistent with Plaintiff's activities of  
8 daily living. Tr. 25-26. An ALJ may discount a medical source opinion to the  
9 extent it conflicts with the claimant's daily activities. *Morgan*, 169 F.3d at 601-02.  
10 Here, the ALJ found Ms. Elliott's opinion inconsistent with Plaintiff's reported  
11 ability to carry firewood, mow the lawn, care for her son, shop, drive, and perform  
12 household chores. Tr. 25-26 (citing Tr. 257-62, 274-77, 302-05). As discussed  
13 above, the ALJ's determination that Plaintiff's activities are inconsistent with the  
14 inability to perform even sedentary work is reasonable.

15 The ALJ gave germane reasons for rejecting Ms. Elliott's opinion. Plaintiff  
16 is not entitled to remand on these grounds.

#### 17 **D. Step Three**

18 Plaintiff contends the ALJ erred by finding that Plaintiff's impairments did  
19 not meet or equal a listing. ECF No. 13 at 19-21. At step three, the ALJ must  
20 determine if a claimant's impairments meet or equal a listed impairment. 20



1 C.F.R. § 416.920(a)(4)(iii). The Listing of Impairments “describes each of the  
2 major body systems impairments [which are considered] severe enough to prevent  
3 an individual from doing any gainful activity, regardless of his or her age,  
4 education or work experience.” 20 C.F.R. § 416.925. “Listed impairments are  
5 purposefully set at a high level of severity because ‘the listings were designed to  
6 operate as a presumption of disability that makes further inquiry unnecessary.’ ”  
7 *Kennedy v. Colvin*, 758 F.3d 1172, 1176 (9th Cir. 2013) (*citing Sullivan v. Zebley*,  
8 493 U.S. 521, 532 (1990)). “Listed impairments set such strict standards because  
9 they automatically end the five-step inquiry, before residual functional capacity is  
10 even considered.” *Kennedy*, 758 F.3d at 1176. If a claimant meets the listed  
11 criteria for disability, she will be found to be disabled. 20 C.F.R. §  
12 416.920(a)(4)(iii).

13 “To *meet* a listed impairment, a claimant must establish that he or she meets  
14 each characteristic of a listed impairment relevant to his or her claim.” *Tackett*,  
15 180 F.3d at 1099 (emphasis in original); 20 C.F.R. § 416.925(d). “To *equal* a  
16 listed impairment, a claimant must establish symptoms, signs and laboratory  
17 findings ‘at least equal in severity and duration’ to the characteristics of a relevant  
18 listed impairment . . . .” *Tackett*, 180 F.3d at 1099 (emphasis in original) (quoting  
19 20 C.F.R. § 404.1526(a)); 20 C.F.R. § 416.926(a). “If a claimant suffers from  
20 multiple impairments and none of them individually meets or equals a listed

1 impairment, the collective symptoms, signs and laboratory findings of all of the  
2 claimant's impairments will be evaluated to determine whether they meet or equal  
3 the characteristics of any relevant listed impairment." *Tackett*, 180 F.3d at 1099.  
4 However, " '[m]edical equivalence must be based on medical findings,' and "[a]  
5 generalized assertion of functional problems is not enough to establish disability at  
6 step three.' " *Id.* at 1100 (quoting 20 C.F.R. § 404.1526(a)); 20 C.F.R. §  
7 416.926(a).

8       The claimant bears the burden of establishing her impairment (or  
9 combination of impairments) meets or equals the criteria of a listed impairments.  
10 *Burch*, 400 F.3d at 683. "An adjudicator's articulation of the reason(s) why the  
11 individual is or is not disabled at a later step in the sequential evaluation process  
12 will provide rationale that is sufficient for a subsequent reviewer or court to  
13 determine the basis for the finding about medical equivalence at step 3." SSR 17-  
14 2P, 2017 WL 3928306, at \*4 (effective March 27, 2017).

15       Here, the ALJ found that Plaintiff's impairments and combinations of  
16 impairments did not meet or equal any listing, including listings 12.04 (depressive,  
17 bipolar and related disorder), 12.06 (anxiety and obsessive-compulsive disorders),  
18 12.08 (personality and impulse-control disorders) and 12.15 (trauma- and stressor-  
19 related disorders). Tr. 18-19. Plaintiff argues the ALJ erred in finding Plaintiff  
20 does not meet or equal a listing. ECF No. 13 at 19-21. However, Plaintiff fails to

1 specify which listing Plaintiff meets or equals. Plaintiff argues only that the  
2 Paragraph B criteria associated with the mental health listings was met. *Id.* The  
3 Paragraph B criteria for the mental listings are met if the impairment results in an  
4 “extreme” limitation of one or “marked” limitation of two of the following areas of  
5 mental functioning: understand, remember, or apply information; interact with  
6 others; concentrate, persist, or maintain pace; and adapt or manage oneself. 20  
7 C.F.R. § 404, Subpart P, Appendix I. “Marked” means more than moderate but  
8 less than extreme. *Id.*

9 Plaintiff argues the ALJ erred in finding Plaintiff has only a mild limitation  
10 in adapting or managing oneself, and in finding Plaintiff has only a moderate  
11 limitation in interacting with others. ECF No. 13 at 19-21. Plaintiff contends she  
12 has marked limitations in both areas of functioning, and thus the ALJ erred in not  
13 finding she meets or equals a listing. *Id.* To meet a listing, the Plaintiff has the  
14 burden of demonstrating each component of the listing is met. *Tackett*, 180 F.3d at  
15 1099; *Burch*, 400 F.3d at 683.

16 For each of the four mental listings the ALJ considered, satisfying the  
17 Paragraph B criteria is not sufficient to meet the listing- the Plaintiff must also  
18 satisfy the Paragraph A criteria. The Paragraph A criteria of Listing 12.04  
19 requires, in relevant part, documentation of Plaintiff exhibiting at least five of the  
20 following: depressed mood; diminished interest in almost all activities; appetite

1 disturbance with change in weight; sleep disturbance; observable psychomotor  
2 agitation or retardation; decreased energy; feelings of guilt or worthlessness;  
3 difficulty concentrating or thinking; and thoughts of suicide or death. 20 C.F.R. §  
4 404, Subpart P, Appendix I. The Paragraph A criteria for Listing 12.06 requires, in  
5 relevant part, either documentation of 1) documentation of at least three of the  
6 following: restlessness; easily fatigued; difficulty concentrating; irritability; muscle  
7 tension; and sleep disturbance; or 2) agoraphobia, characterized by panic attacks  
8 followed with persistent concern/worry about additional attacks or their  
9 consequences, or disproportionate fear/anxiety about at least two different  
10 situations. *Id.*

11 The Paragraph A criteria for Listing 12.08 requires documentation of a  
12 pervasive pattern of one or more of the following: distrust and suspiciousness of  
13 others; detachment from social relationships; disregard for and violation of the  
14 rights of others; instability of interpersonal relationships; excessive emotionality  
15 and attention seeking; feelings of inadequacy; excessive need to be taken care of;  
16 preoccupation with perfectionism and orderliness; or recurrent, impulsive,  
17 aggressive behavioral outbursts. *Id.* The Paragraph A criteria for Listing 12.15  
18 requires documentation of all of the following: exposure to actual or threatened  
19 death, serious injury or violence; subsequent involuntary re-experiencing of the  
20

1 traumatic event; avoidance of external reminders of the event; disturbance in mood  
2 and behavior; and increases in arousal and reactivity. *Id.*

3       The ALJ did not address the Paragraph A criteria for any of the listings, as  
4 the Paragraph B criteria were not satisfied, and Plaintiff does not address any of the  
5 Paragraph A criteria. Even if an argument was set forth regarding the Paragraph A  
6 criteria for the listings, the evidence does not demonstrate that Plaintiff meets the  
7 criteria for any of the listings. There is minimal documentation of Plaintiff's  
8 symptoms of depression, anxiety, PTSD and personality disorder. As discussed  
9 above, while Plaintiff alleges agoraphobia, it has only been reported at one  
10 appointment and there is minimal evidence of Plaintiff experiencing agoraphobia.  
11 There is not evidence of Plaintiff having a pervasive pattern of any of the listed  
12 symptoms in the Listing 12.08 Paragraph A criteria. While Plaintiff has reported  
13 some components of Listing 12.15, such as occasionally reporting disturbed sleep,  
14 Tr. 294, 456, and a single report of nightmares/flashbacks, Tr. 457, there is not  
15 evidence that these symptoms were ongoing, nor that Plaintiff avoided external  
16 reminders of the event. As the Paragraph A criteria is not met for any listing, any  
17 error on the ALJ's part regarding the Paragraph B criteria would be harmless. *See*  
18 *Tommasetti*, 533 F.3d at 1038. Plaintiff is not entitled to remand on these grounds.

1 **CONCLUSION**

2 Having reviewed the record and the ALJ's findings, the Court concludes the  
3 ALJ's decision is supported by substantial evidence and is free of harmful legal  
4 error. Accordingly, **IT IS HEREBY ORDERED:**

5 1. The District Court Executive is directed to substitute Andrew M. Saul as  
6 the Defendant and update the docket sheet.

7 2. Plaintiff's Motion for Summary Judgment, **ECF No. 13** is **DENIED**.

8 3. Defendant's Motion for Summary Judgment, **ECF No. 14**, is  
9 **GRANTED**.

10 4. The Clerk's Office shall enter **JUDGMENT** in favor of Defendant.

11 The District Court Executive is directed to file this Order, provide copies to  
12 counsel, and **CLOSE THE FILE**.

13 DATED November 27, 2019.

14 s/Mary K. Dimke  
15 MARY K. DIMKE  
16 UNITED STATES MAGISTRATE JUDGE  
17  
18  
19  
20